

1 based upon personal knowledge:

2 **NATURE OF THE CASE**

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4 1. Plaintiff brings this action individually and on behalf of all others
5 similarly situated seeking damages and any other available legal or equitable
6 remedies resulting from the illegal actions of FAIR TRADE REAL ESTATE, INC.
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8 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
9 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
10 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
11 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.
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13 **JURISDICTION & VENUE**

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15 2. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiff’s
16 claims arise out of a law of the United States, the TCPA.
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18 3. Venue is proper in the United States District Court for the Central
19 District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part
20 of the events and omissions giving rise to Plaintiff’s claims occurred within this
21 District.
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23 **PARTIES**

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25 4. Plaintiff, ANDREW DE FOREST (“Plaintiff”), is a natural individual
26 residing in the State of California, County of Los Angeles, and is a “person” as
27 defined by 47 U.S.C. § 153(39).
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1 5. Defendant, FAIR TRADE REAL ESTATE, INC. (“Defendant”) is
2 corporation of the State of California which maintains its principal place of
3 business in Santa Ana, California, and is a “person” as defined by 47 U.S.C. §
4 153(39).
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6 6. The above named Defendant, and its subsidiaries and agents, are
7 collectively referred to as “Defendants.” The true names and capacities of the
8 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
10 names. Each of the Defendants designated herein as a DOE is legally responsible
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
12 Complaint to reflect the true names and capacities of the DOE Defendants when
13 such identities become known.
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15 7. Plaintiff is informed and believes that at all relevant times, each and
16 every Defendant was acting as an agent and/or employee of each of the other
17 Defendants and was acting within the course and scope of said agency and/or
18 employment with the full knowledge and consent of each of the other Defendants.
19 Plaintiff is informed and believes that each of the acts and/or omissions complained
20 of herein was made known to, and ratified by, each of the other Defendants.
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26 **FACTUAL ALLEGATIONS**

27 8. Beginning during or about June of 2021, Defendant contacted Plaintiff
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1 on Plaintiff's cellular telephone number ending in -1347, in an attempt to solicit
2 Plaintiff to purchase Defendant's services.

3 9. Plaintiff's cellular telephone number ending in -1347 was added to the
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5 National Do-Not-Call Registry during or about 2015.

6 10. Plaintiff was initially interested in Defendant's services and provided
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8 his permission for Defendant to contact him.

9 11. In the ensuing months, Defendant's frequent calls became extremely
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11 bothersome to Plaintiff.

12 12. During or about February of 2022, Plaintiff received another call,
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14 during which he demanded that Defendant remove him from their list and cease
15 contacting him in any way.

16 13. Plaintiff thus revoked any prior express consent that had existed and
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18 terminated any established business relationship that had existed, as defined under
19 16 C.F.R. § 310.4(b)(1)(iii)(B).

20 14. Despite this, Defendant continued to call Plaintiff in an attempt to
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22 solicit its services and in violation of the National Do-Not-Call provisions of the
23 TCPA.

24 15. On or about September 13, 2022, Plaintiff received a call from (562)
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26 754-5041, a telephone number belonging to Defendant's agent Daniel Herrera
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28 ("Herrera").

1 16. When Plaintiff did not pick up, Herrera sent a text message soliciting
2 Plaintiff's business.

3 17. Plaintiff immediately responded by typing "Stop" and "No thank you,
4 please take me off the list".

5 18. Herrera continued to send Plaintiff messages, stating "There is no list
6 to take you off of" and "Not sure what you're referring to".

7 19. Defendant's calls constituted calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

9 20. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
10 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

11 21. Plaintiff received numerous solicitation calls from Defendant within a
12 12-month period.

13 22. Upon information and belief, and based on Plaintiff's experiences of
14 being called by Defendant after requesting they stop calling, and at all relevant
15 times, Defendant failed to establish and implement reasonable practices and
16 procedures to effectively prevent telephone solicitations in violation of the
17 regulations prescribed under 47 U.S.C. § 227(c)(5).

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25 **CLASS ALLEGATIONS**

26 23. Plaintiff brings this action individually and on behalf of all others
27 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
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1 Classes”). The class concerning the National Do-Not-Call violation (hereafter
2 “DNC Class”) is defined as follows:

3 All persons within the United States registered on the
4 National Do-Not-Call Registry for at least 30 days, who
5 had not granted Defendant prior express consent nor had
6 a prior established business relationship, who received
7 more than one call made by or on behalf of Defendant
8 that promoted Defendant’s products or services, within
9 any twelve-month period, within four years prior to the
10 filing of the Complaint through the date of class
11 certification.
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16 24. The class concerning the National Do-Not-Call violation following
17 revocation of consent and prior business relationship, to the extent they existed
18 (hereafter “DNC Revocation Class”) is defined as follows:
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20 All persons within the United States registered on the
21 National Do-Not-Call Registry for at least 30 days, who
22 received more than one call made by or on behalf of
23 Defendant that promoted Defendant’s products or
24 services, after having revoked consent and any prior
25 established business relationship, within any twelve-
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1 month period, within four years prior to the filing of the
2 Complaint through the date of class certification.

3 25. Plaintiff represents, and is a member of, The DNC Class, consisting
4 of all persons within the United States registered on the National Do-Not-Call
5 Registry for at least 30 days, who had not granted Defendant prior express consent
6 nor had a prior established business relationship, who received more than one call
7 made by or on behalf of Defendant that promoted Defendant's products or services,
8 within any twelve-month period, within four years prior to the filing of the
9 Complaint through the date of class certification.
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12 26. Plaintiff represents, and is a member of, the DNC Revocation Class,
13 consisting of all persons within the United States registered on the National Do-
14 Not-Call Registry for at least 30 days, who received more than one call made by or
15 on behalf of Defendant that promoted Defendant's products or services, after
16 having revoked consent and any prior established business relationship, within any
17 twelve-month period, within four years prior to the filing of the Complaint through
18 the date of class certification.
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22 27. Defendant, its employees and agents are excluded from The Classes.
23 Plaintiff does not know the number of members in The Classes, but believes the
24 Class members number in the thousands, if not more. Thus, this matter should be
25 certified as a Class Action to assist in the expeditious litigation of the matter.
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1 28. The Class members are so numerous that the individual joinder of all
2 members is impractical. While the exact number and identities of the Class
3 members are unknown to Plaintiff at this time and can only be ascertained through
4 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
5 The Classes include thousands of members. Plaintiff alleges that members may be
6 ascertained by the records maintained by Defendant.
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9 29. Plaintiff and members of the DNC Class and DNC Revocation Class
10 were harmed by the acts of Defendant in at least the following ways: Defendant
11 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
12 via their telephones for solicitation purposes, thereby invading the privacy of said
13 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
14 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
15 and DNC Revocation Class members were damaged thereby.
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19 30. Common questions of fact and law exist as to all members of the DNC
20 Class which predominate over any questions affecting only individual members of
21 the DNC Class. These common legal and factual questions, which do not vary
22 between DNC Class members, and which may be determined without reference to
23 the individual circumstances of any DNC Class members, include, but are not
24 limited to, the following:
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28 a. Whether, within the four years prior to the filing of this

1 Complaint through the date of class certification, Defendant or
2 its agents placed more than one solicitation call to the members
3 of the DNC Class whose telephone numbers were on the
4 National Do-Not-Call Registry and who had not granted prior
5 express consent to Defendant and did not have an established
6 business relationship with Defendant;
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9 b. Whether Defendant obtained prior express written consent to
10 place solicitation calls to Plaintiff or the DNC Class members'
11 telephones;
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13 c. Whether Plaintiff and the DNC Class member were damaged
14 thereby, and the extent of damages for such violations; and
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16 d. Whether Defendant and its agents should be enjoined from
17 engaging in such conduct in the future.
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19 31. As a person that received numerous solicitation calls from Defendant
20 within a 12-month period, who had not granted Defendant prior express consent
21 and did not have an established business relationship with Defendant, Plaintiff is
22 asserting claims that are typical of the DNC Class.
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24 32. Common questions of fact and law exist as to all members of the DNC
25 Revocation Class which predominate over any questions affecting only individual
26 members of the DNC Revocation Class. These common legal and factual
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1 questions, which do not vary between DNC Revocation Class members, and which
2 may be determined without reference to the individual circumstances of any DNC
3 Revocation Class members, include, but are not limited to, the following:

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- 5 a. Whether, within the four years prior to the filing of this
6 Complaint through the date of class certification, Defendant or
7 its agents placed more than one solicitation call to the members
8 of the DNC Revocation Class whose telephone numbers were
9 on the National Do-Not-Call Registry and who had revoked any
10 prior express consent and any established business relationship
11 with Defendant;
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- 13 b. Whether Plaintiff and the DNC Revocation Class members
14 were damaged thereby, and the extent of damages for such
15 violations; and
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- 17 c. Whether Defendant and its agents should be enjoined from
18 engaging in such conduct in the future.
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22 33. As a person that received numerous solicitation calls from Defendant
23 within a 12-month period, who, to the extent one existed, had revoked any prior
24 express consent and any established business relationship with Defendant, Plaintiff
25 is asserting claims that are typical of the DNC Revocation Class.
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27 34. Plaintiff will fairly and adequately protect the interests of the members
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1 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
2 class actions.

3 35. A class action is superior to other available methods of fair and
4 efficient adjudication of this controversy, since individual litigation of the claims
5 of all Class members is impracticable. Even if every member could afford
6 individual litigation, the court system could not. It would be unduly burdensome
7 to the courts in which individual litigation of numerous issues would proceed.
8 Individualized litigation would also present the potential for varying, inconsistent,
9 or contradictory judgments and would magnify the delay and expense to all parties
10 and to the court system resulting from multiple trials of the same complex factual
11 issues. By contrast, the conduct of this action as a class action presents fewer
12 management difficulties, conserves the resources of the parties and of the court
13 system, and protects the rights of each Class member.
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15 36. The prosecution of separate actions by individual Class members
16 would create a risk of adjudications with respect to them that would, as a practical
17 matter, be dispositive of the interests of the other members not parties to such
18 adjudications or that would substantially impair or impede the ability of such non-
19 party Class members to protect their interests.
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21 37. Defendant has acted or refused to act in respects generally applicable
22 to The Classes, thereby making appropriate final and injunctive relief with regard
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1 to the members of the Classes as a whole.

2 **FIRST CAUSE OF ACTION**

3 **Negligent Violations of 47 U.S.C. § 227(c)**
 4 **On Behalf of the DNC Class and the DNC Revocation Class**

5 38. Plaintiff repeats and incorporates by reference into this cause of action
 6 the allegations set forth above at Paragraphs 1-37.

7
 8 39. The foregoing acts and omissions of Defendant constitute numerous
 9 and multiple negligent violations of the TCPA, including but not limited to each
 10 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular
 11 47 U.S.C. § 227(c)(5).
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13 40. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),
 14 Plaintiff and the DNC Class and DNC Revocation Class members are entitled to
 15 an award of \$500.00 in statutory damages, for each and every violation, pursuant
 16 to 47 U.S.C. § 227(c)(5)(B).
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19 41. Plaintiff and the DNC Class and DNC Revocation Class members are
 20 also entitled to and seek injunctive relief prohibiting such conduct in the future.
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22 **SECOND CAUSE OF ACTION**

23 **Knowing and/or Willful Violations of 47 U.S.C. § 227(c)**
 24 **On Behalf of the DNC Class and DNC Revocation Class**

25 42. Plaintiff repeats and incorporates by reference into this cause of action
 26 the allegations set forth above at Paragraphs 1-37.

27 43. The foregoing acts and omissions of Defendant constitute numerous
 28

1 and multiple knowing and/or willful violations of the TCPA, including but not
2 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c),
3 in particular 47 U.S.C. § 227(c)(5).
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5 44. As a result of Defendant's knowing and/or willful violations of 47
6 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class members
7 are entitled to an award of \$1,500.00 in statutory damages, for each and every
8 violation, pursuant to 47 U.S.C. § 227(c)(5).
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10 45. Plaintiff and the DNC Class and DNC Revocation Class members are
11 also entitled to and seek injunctive relief prohibiting such conduct in the future.
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13 **PRAYER FOR RELIEF**
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15 WHEREFORE, Plaintiff requests judgment against Defendant for the following:
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17 **FIRST CAUSE OF ACTION**

18 **Negligent Violations of the Telephone Consumer Protection Act**
19 **47 U.S.C. § 227(c)**

- 20 • As a result of Defendant's negligent violations of 47 U.S.C. §
21 227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class
22 members are entitled to and request \$500 in statutory damages, for
23 each and every violation, pursuant to 47 U.S.C. 227(c)(5).
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- 25 • Any and all other relief that the Court deems just and proper.
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FOURTH CAUSE OF ACTION
Knowing and/or Willful Violations of the Telephone Consumer Protection
Act
47 U.S.C. § 227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).
- Any and all other relief that the Court deems just and proper.

46. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 4th Day of October, 2022.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff